Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

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I. INTRODUCTION AND SUMMARY

Below, U S WEST Communications, Inc. ("U S WEST") responds to those filings made with the Federal Communications Commission ("FCC" or "Commission") regarding the above-referenced matter.[1] While there is A considerable difference of opinion on the issue, U S WEST continues to believe that requiring resellers to have their own **Carrier Identification Code ("CIC")** would be a sound regulatory decision, promoting greater clarity around carrier identifications as between facilities-based interexchange carriers ("IXC") and their resellers. Over and above the better carrier identification promoted by CIC assignment to switchless resellers, such assignment promotes the competitive

[1] In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order ("Second Report and Order") and Further Notice of Proposed Rulemaking ("Further Notice"), FCC 98-334, rel. Dec. 23, 1998.

environment by allowing greater competitive choices within the resale environment with respect to 2-PIC (primary interexchange carrier) and dial-around options,[2] as the comments of GVNW Consulting, Inc. ("GVNW") demonstrate. All told, *assuming full cost recovery,* the CIC assignment "solution" best aligns "problem identification" with "problem solving" and the costs associated with both. After all, the difficulties associated with both soft-slamming and confusing carrier identifications on bills are a result of inadequate carrier identifications being made available to local exchange carriers ("LEC") by IXCs. Requiring resellers to have their own CIC is a targeted solution to the problem and one which confines the incurring of costs to the smallest subset of industry participants.

If the Commission declines to pursue this approach, however, U S WEST continues to believe that utilization of **pseudo-CICs** would be feasible -- although not as capable of quick implementation as separate CIC assignments. Despite working with colleagues on this issue over the past month, we continue to believe that fundamental confusion exists over the language and proposals associated with the Commission's Option 2. When a better understanding is reached in this area, we believe a pseudo-CIC solution will prove a better solution than a Carrier Identification Registry (as proposed by SBC Communications, Inc. ("SBC")) or other suggested solutions.

In all events, U S WEST opposes the positions of those commentors who claim to essentially "moot out" the carrier identification issue by lateralling the

[2] See GVNW at 23-25 and discussion below at 11-12.

matter to a **Third Party Administrator for Preferred Carrier Changes/Freezes** ("PC Change/Freeze Administrator," "TPA" or, in context, "Administrator"). These commentors would have this Commission mandate the creation of a third-party pseudo-regulatory structure to promote governmental regulatory objectives. In pressing this advocacy, such commentors confuse the notion of administration of a national resource (numbers) and the voluntary establishment of local/regional local number portability ("LNP") database administrators with the forced government interference in, and management of, private commercial relationships.

The Commission's jurisdiction to mandate such an Administrator is highly doubtful given the total absence of any Congressional suggestion that such a body might be appropriate to accomplishing Congress' Section 258 objectives. Furthermore, the idea that the government should intervene in private commercial operations and redesign those operations is highly disturbing.

Nothing resembling the kind of PC Change/Freeze Administrator proposed has even been mandated by regulatory authority under the Communications Act. And, in the post-Telecommunications Act of 1996 -- an environment ostensibly meant to reflect substantial deregulation -- now is certainly not the time to start. The mandatory creation of such an Administrator would violate the Chairman's now familiar mantra that -- in keeping with Congressional intent associated with the passage of the 1996 Act -- the Commission "regulate only when necessary and that [it] do so in a common sense manner that is not overly burdensome to

carriers."[3] Not only does the proposed PC Change/Freeze Administrator lack logic in an environment that is supposed to be moving to an increasingly deregulatory landscape, it is clearly calculated to drive-up the costs of the rivals (i.e., the LECs) of the big three IXCs.[4]

An Administrator of the type proposed by the IXCs has no appeal to LECs who (a) **must** have the carrier information which the IXCs seek to accumulate elsewhere ultimately returned to the LECs in order for those carriers to program their switches, (b) have existing systems in place to process the necessary information and now earn revenue by processing the carrier changes proposed to be directed elsewhere, and (c) are not eager to combine a loss of revenue with an expenditure to support a revenue-supplanting Administrator. The concept of a PC Change/Freeze Administrator was a bad one when first introduced back in 1997 and it has gotten no better with further definition.

Responding to comments regarding **Internet** transactions, U S WEST supports those commentors arguing that the Commission has taken an unduly

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[3] Most recently this credo was captured and disclosed in the "Press Statement of FCC Chairman William E. Kennard," associated with Report No. IN 99-13, International Action, Press Release, "Commission Streamlines the International Authorization Process, Reducing Regulatory Burdens and Granting Greater Flexibility to Authorized International Carriers," IB Docket No. 98-118, dated Mar. 18, 1999.

[4] The Commission should put to bed the notion of a PC Change/Freeze Administrator, regardless of how it responds to the Third Party Liability (Dispute Resolution) Administrator ("Liability Administrator") also under discussion by the industry. See Second Report and Order ¶¶ 55-57, Further Notice ¶¶ 183-84. An IXC-proposed model for such an Administrator has recently begun to be circulated among a broader constituent base for consideration and discussion.

conservative approach to what essentially constitutes e-commerce transactions.[5] Not only is the approach contrary to federal executive and legislative policy, historical precedent and emerging legal doctrine, it is also at odds with the Commission's own evolution of electronic pleadings and its rules on signage. Believing that the Internet and e-commerce should expand the field of permissible verification options, we accordingly oppose those commentors who suggest that the Commission's "off-line" verification methods are the only appropriate ones to be used in an electronic environment or the only ones aligned with the public interest.[6] Rather, we support those who argue that verification models more directly planned for electronic commerce could be designed that would meet regulatory goals and that such models should be permitted.

With respect to the specifics of **Third Party Verification ("TPV") practices** (i.e., "live" or "automated," "scripted" or not, occurring with or without carrier sales personnel remaining on line), U S WEST has but a few remarks in response to those parties who filed comments on these issues. As a preliminary matter, it is worth pointing out that "regulation" in this area will clearly affect competitive choices.[7] Such regulation has the potential not only to restrict the

[5] Tel-Save.Com, Inc. ("Tel-Save") and the Competitive Telecommunications Association/America's Carriers Telecommunication Association ("CompTel/ACTA") present very persuasive cases in this regard. See Tel-Save at 7; CompTel/ACTA at 2-6.

[6] PriceInteractive, Inc. ("PriceInteractive") at 16; Teltrust, Inc. ("Teltrust") at ii, 14-15 (arguing that only the current off-line verification methodologies [without ever using the term "off-line"] are appropriate).

[7] See, e.g., Voice Log at I) B) (referencing other TPV providers) and IV (arguing that the market "demonstrates the power of a competitive marketplace").

range of permissible verification options available to carriers but the source of supply as well. For these reasons, the Commission should act cautiously in further regulation in this area.

In line with this logic, U S WEST supports maximum flexibility with respect to TPV practices. Less regulation in this area is the better policy. This is especially true if carriers remain interested in utilizing TPV with respect to electronic transactions -- a decision we believe should be voluntary, assuming other verification precautions are taken by the serving carrier.

II. SOFT-SLAM/CARRIER IDENTIFICATION ISSUES

A. General Observations Of The Comments Filed On This Subject

1. The "Problem" to be Solved

To be clear on one point. The "problem" of soft-slamming is one created within the IXCs' systems, not the LECs'. When carrier changes within a facilities-based provider's CIC are made, the LEC generally is not advised of that fact, remaining ignorant of any effect to the customer's account.[8] Rather than the LECs

[8] If a reseller has its own CIC, sometimes this information is submitted to the LEC. See GVNW at 14 (suggesting that sometimes even when a carrier has a CIC it is not submitted by the serving facilities-based carrier). U S WEST would then make the appropriate record changes so that the reseller is then shown as the end-user's carrier. Other than that case, however, no information comes to U S WEST. Compare SBC at 8 (referencing Second Report and Order ¶ 146, to the effect that in today's environment the LEC may not even be notified of a carrier change that is submitted by the switchless reseller to its facilities-based provider.); Ameritech at 5 (PC changes between a single CIC "does not require any processing by a LEC at all; the change is implemented entirely by the facilities-based . . . (IXC) serving the switchless reseller(s)."; also noting that because the LEC has no way of knowing whether a particular switchless reseller (if any) is serving the end user, the billing identification of the 1+ carrier comes out wrong).

being at fault for the current state of affairs, it is the IXCs who -- through their continued reliance on Automatic Number Identification ("ANI") databases even now may be engaged in unjust and unreasonable practices with respect to reseller identifications and customer choices.[9]

In a resale environment, facilities-based carriers are the "executing carrier" for the carrier change submissions of their resellers.[10] The use of ANI databases frustrates the execution of carrier changes in those cases where a CIC has been assigned,[11] and will continue to complicate the situation in the event CIC assignments are expanded. Such systems clearly should change to accommodate resellers who currently have CICs. And, if more expansive CIC assignments become part of the landscape, greater utilization of the Carrier Identification Protocol ("CIP") information currently available to facilities-based carriers from LECs,[12] will be essential.

Finally, not only in the soft-slamming area, but in the billing context as well,

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But see GVNW at 7 and n.13 (stating that a Customer Account Record Exchange ("CARE") transaction is generated and sent to the LEC when a facilities-based carrier updates its ANI database to note a new reseller customer). Unless the customer is moving from a carrier with a different CIC, U S WEST believes GVNW is in error.

[9] GVNW at 6-7.

[10] See SBC at 8-9.

[11] GVNW at 9-15. Where facilities-based IXCs ignore the CIC information (provided in the CIP parameter of the signaling message), choosing instead to process the carrier change information through the ANI database, the information in possession of the LEC with respect to the customer's chosen carrier is not given effect at the IXC platform until that database is "updated." There could be a day or so where the customer's choice of carrier is not given effect.

[12] GVNW at 10-11, 12-13.

LECs cannot be held unilaterally (or even primarily) responsible for industry standards and decisions around carrier identifications.[13] For example, U S WEST -- like other LECs -- sometimes receives information in the field associated with the existence of a switchless reseller.[14] That information, however, is totally useless to actually identify a particular reseller by name on a bill.

2. Lack of Clarity Around Options Perpetuates Confusion

Nowhere are the filed comments more difficult to understand or reconcile than in this area. It often seems that parties who -- ostensibly -- are describing the same phenomena are standing at totally different places with respect to the elephant, so different are the descriptions of what (a) currently happens and (b) could be crafted in the area of cost-effective carrier identification models. Indeed, U S WEST is skeptical that this matter can really be fully understood through paper submissions. A carrier/Commission forum might need to be convened to "get to all the facts" in a context that is conducive to interactive communications and follow-up questions.

While commentors all seem to understand the proposal outlined in Option 1, i.e., CIC assignments to resellers, the facts asserted about how things currently

[13] MCI would treat the matter of confusion around the identification of switchless resellers on the bill as one of the LECs' creation. See MCI at 15. MCI's rather casual missive that LECs should just be expected to "fix" the billing identification demonstrates either a material ignorance of the problem or a hope that by oversimplifying the issue the Commission might "order" a result without appreciating the difficulty of getting to it. Compare CompTel/ACTA at 10-11 ("LEC billing system may incorrectly identify the facilities-based IXC as the customer's carrier when a switchless reseller is the customer's actual service provider").

operate and how they might change if this option were executed are confusing. Option 2 appears not to be understood at all, since some commenting parties (such as U S WEST) argue that pseudo-CICs are currently utilized, whereas other carriers seem to have no awareness of this fact (suggesting either that U S WEST has a better understanding of the facts and the nomenclature or that what U S WEST calls pseudo-CICs others might call something else). And, Option 3 -- an option which U S WEST believes is so ill-described as to make comment on it virtually impossible[15] -- is defined and endorsed by some commenting parties.[16] However, that endorsement is combined with a suggestion that the CARE record be modified to allow for a field to identify the reseller (other than the existing CIC field).[17]

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[14] This would be the SRI (or Switchless Reseller Indicator) of the CARE record, which some facilities-based IXCs populate and some do not.

[15] And see Sprint Corporation ("Sprint") at 6 (identifying a similar problem, and noting -- as does AT&T -- the added problem associated with a "reseller of a reseller"). See further AT&T Corp. ("AT&T") at 37-39.

[16] For example, Ameritech describes this option as one involving "whether facilities-based IXCs should be required to modify their billing records and processes to allow identification of resellers on the consumer's bill." Ameritech at 6. But, it is clear that Ameritech does not really mean to confine the IXCs' responsibilities here to just giving the LEC the information for bill accuracy. On the next page, Ameritech discusses using the information to determine the PC on the account so as to allow for proper affectuation of the PC freeze. Id. at 7.

[17] Id. at 6. ("Rather, than mandating that resellers be assigned a CIC or pseudo-CIC, however, the Commission should direct that the identifying information be transmitted through a discrete field with the [CARE] record that is not part of the CIC field. Using a discrete field within CARE, rather than the CIC field, would be far more efficient and cost effective."), at 9 (claiming that its proposal "offers the identical benefits to a pseudo-CIC proposal but would be far easier and cheaper to implement. That is because populating the CIC field with additional digits would

It is U S WEST's understanding that such a carrier identification field does exist already in a record that often is transmitted between carriers, i.e., an EMI record pertaining to billing that incorporates a pseudo-CIC field. It is correct that this information is not currently incorporated in the CARE record. However, that does not preclude such a field from being incorporated in that record in the future. Fundamentally, we believe that any carrier identification system other than a CIC assignment must work from the existing systems and records to embellish on what is there rather than start from scratch, such as some commentors propose.

Below, U S WEST discusses Options 1 and 2, attempting to sort through some of the confusion associated with these Options. Even those carriers (other than the IXCs pressing for **TPAs**) that object to CIC assignments might support some sort of "pseudo-CIC assignment" **if** this option were defined in a way generally more acceptable than the current definition, **if** the cost/benefit analysis showed such to be warranted,[18] **if** institution of this "remedy" could be done in a sufficiently timely manner so as to be worthwhile,[19] **and if** cost recovery could be assured.

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require systems changes that could be avoided if the carrier identification is transmitted through a CARE field that is separate from the CIC field.").

[18] One cannot just ignore the comments of the Telecommunications Resellers Association ("TRA") which makes a provocative case that no amount of work in this area is worth the cost, given the marginal nature of the problem trying to be solved. See TRA generally.

[19] See U S WEST Comments at 7 (it would take about 18 months at a minimum to get this issue worked through the Ordering and Billing Forum ("OBF")). And compare Ameritech at 9 (outlining its intentions, as expressed to the Chairman, not to take on additional information technology through the early part of the year 2000 as part of its infrastructure stabilization policy).

B. Assignment Of CICs To Resellers

1. Comments of GVNW

U S WEST supports the comments of GVNW, which we believe present the most educated filing on the state of current systems associated with switchless resale and how the separate assignments of CICs to resellers might predictably affect the current dynamics associated with the provision of interexchange services by such carriers.[20] Chief among those aspects that render GVNW's advocacy persuasive is that it represents small, often rural, independent telephone companies who have interexchange affiliates, the latter of whom often enter the market through switchless resale.[21]

GVNW points out that "soft-slamming" extends not only to the three examples generally included in that category and outlined by the Commission in its Further Notice but also to two other types of inappropriate carrier/end-user treatment and billing.[22] Through its filing, one gets a better sense of the ANI systems currently utilized by facilities-based IXCs, and how those systems contribute not only to the slamming situations generally understood but those less obvious to regulatory review.

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[20] This is not only the case here, but in the Truth-in-Billing proceeding, as well. It is for that reason that U S WEST attached copies of GVNW's comments in that proceeding to our opening Comments.

[21] GVNW at 1, 3 and n.5. It is difficult to understand the precise differences between the GVNW and TRA constituencies. Yet, the former asserts that it has a small carrier perspective and it supports CIC assignment; the latter asserts the same thing and vehemently opposes it.

[22] Id. at 4 (inappropriately treating calls as casual calls and failing to differentiate between inter- and intra-LATA end-user carrier choices).

Indeed, GVNW's indictment of the currently utilized ANI systems suggests that the continued use of such systems into the future will not only compromise clarity around carrier identification, but will frustrate competitive advancement in the provision of interexchange services competition. From this foundation, then, GVNW's support for CIC assignments to switchless resellers is supported not only by its identification of two types of "soft-slams" not generally identified or discussed, but also by its observation that such would permit greater competition in the dial-around and intra-LATA (2-PIC) service offerings.[23] Given the strong foundation of its arguments and the constituency it represents, the Commission should accord substantial deference to the advocacy of GVNW.

2. Other Commentors and Stated Positions

Contrary to U S WEST's advocacy in this area, a number of commentors -- both IXCs and LECs -- oppose the assignment of CICs to resellers.[24] While motivations behind the lack of support differ,[25] the stated positions align carriers who often do not agree.

The same is true of those supporting the assignment of CICs. Both IXCs and

[23] Id. at 22-25.

[24] See, e.g., MCI at 15-20; AT&T 36-37; Frontier Corporation ("Frontier") at 3-4; Ameritech at 5-6; SBC at 5.

[25] IXCs argue that all will be well if only the FCC mandates the establishment of a TPA (MCI at 19; AT&T at 2) or that requiring a CIC to provide resale services would constitute a barrier to entry (MCI at 18-19; Frontier at 5; TRA, generally). LECs are generally concerned about number conservation and future switch changes associated with CICs of expanding digits. SBC at 6; Ameritech at 2.

LECs fall into this camp,[26] although they present different advocacy with respect to whose conduct should change and who should bear the financial responsibilities associated with any CIC assignments.[27] Carriers supporting CIC assignments argue that there are more than enough CICs to support assigning them to resellers[28] and that such is the most cost-effective manner of alleviating both soft-slamming and billing issues associated with carrier identifications.

Commentors opposing the assignment of CICs generally present one of the two arguments (or both) that U S WEST anticipated with respect to such assignments: cost and resource conservation. With respect to the former, some commentors argue that this is too expensive a solution; so much so -- some commentors allege -- that it would probably constitute a barrier to market entry.[29]

U S WEST simply does not believe this advocacy. There is certainly no solid information in the record that resellers would go out of business, or that competitive alternatives would be diminished, if CICs were required of switchless resellers. Indeed, just the contrary is suggested if it is true (as argued by GVNW)

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[26] See, e.g., Sprint at 4-7; BellSouth at 2; U S WEST Comments at 6-16. And see GVNW, generally.

[27] See, e.g., Sprint at 6 (noting that the reseller is the "cost-causer" with respect to both soft-slamming and the billing confusion) and asserting that LECs might have to prove-up their costs of CIC activations and offer extended payment plans if CIC assignments become a reality. But see U S WEST Comments at note 15 (stating that the facilities-based provider, not the reseller, would be billed for the CIC activation charge, said carrier clearly not needing an extended payment plan). And see GVNW at 11-13 (suggesting that it is the facilities-based carrier and its ANI (as opposed to Carrier Identification Protocol ("CIP")) systems that might be the cause of the costs).

[28] See, e.g., Sprint at 4-6 and nn. 3-4.

that the utilization of CICs would open up two additional long distance service offering potentials, i.e., dial around and 2-PIC services.[30]

Like the cost issue, opposition to the assignment of CICs on conservation grounds[31] was also anticipated.[32] None of the commentors present **facts** from which the Commission could rationally or reasonably determine that the assignment of CICs to switchless resellers would deplete the inventory of available CICs in any material way. Indeed, the arguments often make logical leaps about the utilization of CICs were they to be assigned to switchless resellers that are ill-founded in fact.[33]

Moreover, with respect to those arguments that using CICs (number-based

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[29] MCI at 18-21; Frontier at 5.

[30] Furthermore, the motivation of facilities-based carriers to keep their facilities at full utilization (see Qwest Communications Corporation ("Qwest") at 8-9) suggests that the predicted death of resellers is greatly exaggerated.

[31] See, e.g., AT&T at 36-37; Cincinnati Bell Telephone Company ("CBT") at 2; GST Telecom Inc. ("GST") at 15 and n.22 (arguing that assigning such CICs could drive CIC length upward, but noting that a substantial body of CIC inventory would likely remain even if CICs were assigned to switchless resellers).

[32] U S WEST Comments at 13-14.

[33] For example, in support of its "number depletion" advocacy, AT&T references the number of resellers in the market (around 500), arguing that such is a substantial number and that some carriers might even require two CICs, suggesting an even higher depletion rate. AT&T at 36-37. From that advocacy, AT&T extends its hypothetical consumption rhetoric to one suggesting that -- indeed -- such resellers might decide they need as many as six CICs (the number of CICs generally supported by industry as preliminarily available to carriers once the Commission lifts the CIC moratorium). In one fell swoop about 3,000 codes will have been rendered unavailable for other purposes.

AT&T never takes into account that a number of those 500 resellers already have CICs of their own and will not require any more, suggesting that far less than 3,000 codes will be made unavailable by a CIC assignment mandate. Similarly, CBT makes an exhaustion argument, as well, but provides no supporting factual data. CBT at 2.

identifications) to solve a "slamming" problem (non-number based problem) is inherently illogical and bad policy, GVNWs analysis that CIC assignments would open the door to additional service offerings tracks totally with currently-deemed "acceptable" uses of CICs,[34] i.e., provisions of different service offerings. When all is said and done, those arguing that CICs should not be assigned to switchless resellers simply do not make their case. Failing to do so, CIC assignments should not be rejected based on their arguments.

C. Assignment Of Pseudo-CICs To Resellers

1. Utilizing Existing Systems Provides the Best Foundation

The "solution" of utilizing a pseudo-CIC is nowhere near as targeted or elegant as requiring that switchless resellers have their own CICs. As mentioned in our opening comments, requiring a CIC **fixes** both the soft-slam and the carrier identification on the bill through a single system (the Regional Subscription System ("RSS")), **without requiring substantive modifications to those systems.**[35]

However, other processes do exist which, through modifications, could perform the same function. Those systems involve pseudo-CICs.[36] To make use of these types of "not-real" CICs in a manner that would best accommodate national integration, work should proceed through existing fora, utilizing existing

[34] GVNW at 22.

[35] See U S WEST Comments at 3; GVNW at 19.

[36] U S WEST uses the term "pseudo-CIC" in this discussion. However, recent industry discussions around this issue suggest other nomenclatures are also in use (such as "sub-CIC" or "alternative CIC" or "system CIC"), sometimes with the phrase meaning what the Commission characterizes as a "pseudo-CIC" and sometimes not.

mechanized processes. Specifically, design and development work should proceed in the OBF to modify the presentation of pseudo-CICs so that in the future they appear in the CARE record associated with the RSSs, not only in the records delivered to the billing systems associated with third-party bill pages.[37]

U S WEST continues to believe that those carriers rejecting out-of-hand the use of pseudo-CICs to accomplish carrier identifications do so out of a misunderstanding of what information the existing systems are capable of processing, how pseudo-CICs might operate with respect to carrier identifications,[38] and what work efforts would be necessary to incorporate the current pseudo-CIC information into the RSS stream of information transfers, as well as the third-party billing systems. This lack of understanding, then, drives them to advocate other solutions. But those other solutions offer no value over a pseudo-CIC/CARE record structure and do not even begin to build on existing systems that might be modified. The proposals seek to create or build new systems. For this reason, they are inherently objectionable.

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[37] Comments such as those made by GST that "implementation of a 'pseudo-CIC' would not immediately require modifications to billing and message processing systems" (at 16) is simply incorrect. Apparently, GST thinks -- erroneously -- that such systems would only be impacted if an actual CIC assignment were made. Id. at 15 n. 23.

[38] For example, Sprint rejects this option in favor of CIC assignment (which it correctly observes "can be readily implemented using systems already in place"), because it believes that a pseudo-CIC model "would require LECs and IXCs to modify their switches to recognize the additional digits." Sprint at 6. But pseudo-CICs have nothing to do with routing or switches and are not used in the network or with respect to signaling.

2. SBC Registration Plan is Unduly Complex

SBC proposes (in line with its earlier advocacy in the Truth-in-Billing Proceeding),[39] a Carrier Identification System ("CIS")[40] wherein every interstate carrier would be assigned a Carrier Identification Number ("CIN"). The CIN would be assigned by an administrator, who would operate a national database, supporting per query transaction capabilities.[41]

U S WEST opposes this plan and SBC's advocacy in this area. The SBC proposal reflects too much of a "from scratch" perspective and fails to build on the existing CARE record standards and operations systems. For the reasons stated above, we believe a "not real" carrier identification system that can be accomplished

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[39] Comments of SBC Communications Inc., CC Docket No. 98-170, filed Nov. 13, 1998 at i, 5-6.

[40] Not to be confused with the Lockheed Martin CIS organization that prepared the Third Party PC Change/Freeze Administrator proposal.

[41] SBC at 6-7. While the SBC proposal by its terms would only apply to interstate carriers, the Commission should be aware of other carrier identification initiatives relative to local exchange carrier identifications. And see National Association of State Utility Consumer Advocates ("NASUCA") at 9-10 (addressing carrier identification issues and not differentiating between interstate and intrastate or local carriers). That there could be an "overlap" of issues and work efforts seems certain.

The matter of local carrier identifications is currently a matter of hot debate in no less than three carrier forums (i.e., the Network Interconnection and Interoperability Forum ("NIIF"), the OBF, and the Toll Fraud Prevention Committee ("TFPC")), with no easy solution in sight. Between these three fora, there are nine active issues that deal with many aspects of the capability to identify the local service provider. Joint industry efforts are ongoing through a joint task group (Service Provider Information Issues Task Group ("SPIITG")) made up of representatives from the various fora to ensure that architectures and solutions around this topic reach some degree of commonality and consistency across the industry. Recent contributions to the architectural issues suggest that one solution

through the CARE processes is strongly preferable.

While SBC clearly articulates why it opposes the Commission's option that all carriers have assigned CICs,[42] less clearly articulated is why it rejects the pseudo-CIC option.[43] The objections to this latter option are especially perplexing since SBC espouses a separation between routing and billing identifications[44] -- which is precisely what a pseudo-CIC does. Currently, the pseudo-CIC has nothing to do with routing, only with billing. The information is conveyed in a field incorporated in all EMI records.[45] The challenge is to also get the information incorporated in the CARE record.

Furthermore, although SBC's proposal assumes that any developed CIN would drive the proper identification to a customer's bill,[46] it never explains -- except in the most general terms -- how this would be accomplished. However, such

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will not fit all of the industry's needs and that the final agreement may suggest a suite of alternatives, or a phased approach to providing identification capabilities.

[42] SBC at 5 (opposing CIC assignments on number conservation grounds).

[43] SBC merely says it does not support the pseudo-CIC option without explaining why. Id.

[44] Id.

[45] For example, a North American originated, terminated and billable direct dialed call (EMI record 01-01-01) will contain a 1 in position 166 of the record to indicate an Alternate Carrier Billing Identification ("ABIC") or "pseudo-CIC" (NOTE: the industry uses the terms ABIC and "pseudo-CIC as synonyms for each other.), and then the carrier identification would be placed in positions 150-153. Therefore, if position 166 of the 01-01-01 record is equal to a 1, the values in positions 150-153 equals an ABIC or pseudo-CIC. (With respect to those resellers who bill through an aggregator, the pseudo-CIC associated with the aggregator is the one that would appear in the carrier identification field.) If position 166 of the 010101 record is blank, the values in positions 150-153 equals a CIC.

[46] SBC at 6-7, 9-10.

could be accomplished through existing systems for a fraction of the cost suggested by the creation of an entirely new costly database and per-query process, as outlined by SBC.[47] For all these reasons, the SBC proposal should be rejected in favor of something more complementary with existing systems and architectures.

III. THIRD-PARTY ADMINISTRATOR FOR PC CHANGES/FREEZES

A. Generally, The Proposal Lacks Industry Or Market Benefit

In no event should "solving" soft-slamming or carrier identification issues be addressed through the establishment of a PC Change/Freeze Administrator.[48] Nor should such Administrator be mandated to "correct" or protect against some ill-defined, putative LEC anticompetitive *animus*. All that an Administrator would do is increase costs for the entire industry, including LECs who already have sunk investment associated with their carrier change processes, from both a systems-processing and switch translations perspective.

LECs should not have to re-invent the wheel and then pay for the

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[47] SBC candidly admits that its proposals would "impose[ ] additional cost[s] on all carriers because significant changes would be required in their operating systems to support the CIN," and that "[m]odifications would also be required in a number of national guidelines and standards." Id. at 9. Since this would also be true with respect to a pseudo-CIC approach (see U S WEST Comments at 7-8), it remains a mystery why creating an entirely new system would be preferable to incrementally working from existing systems and standards.

[48] This is CompTel/ACTA's suggestion (at 13) after they announce each solution too costly (with fairly skimpy analysis) for either the reseller or the facilities-based IXC. Just pages later, demonstrating the extent to which the various notions of "third-party administrative" agents can become melded if one is not careful to keep the end goal firmly in mind, CompTel/ACTA suggests that a Liability Administrator might be able to perform this larger administrative function, if the former type entity ever gets established. Id. at 14.

reinvention! Contrary to Qwest's generally facile analysis of this issue,[49] it is certainly not a "simpler system" to replicate an entire administrative infrastructure to handle PC changes through a per query approach[50] than to require switchless resellers to get their own CICs (or even to change billing systems to accommodate pseudo-CICs). And, contrary to MCI's unsupported assertion that the "public policy benefits" of such an Administrator are "uncontested,"[51] U S WEST is here to proclaim "we contest it now, as we have in the past!"[52]

As an initial matter, if the concept of an Administrator is converted from something stemming from a voluntary carrier decision to participate, the

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[49] Qwest (at 26-27) proposes that the Commission issue another NPRM on this issue, after the framework of the Liability Administrator is determined. And see Frontier at 11-12. Apparently, neither appreciate that the "Further Notice" on this matter is now -- the general idea having been raised previously.

[50] Qwest at 11. And see MCI at 6 (arguing that a "simple way" to overcome the shortcomings of the back office systems of competitive LECs that it encounters is to create this massive PC Change/Freeze Administrator).

[51] MCI at 8.

[52] MCI claims that the primary benefit of the Lockheed Martin document is that it demonstrates technical feasibility of a TPA for PC Changes/Freezes. Id. at 8. To the best of U S WEST's knowledge the pure "technical feasibility" of such an Administrator has never been in doubt. Prior advocacy from opponents of such an Administrator (such as U S WEST) has been that supporting carriers provided no "picture" of their vision, with some declaring that physical interconnections would need to occur (such as in an LNP environment) and others arguing that simply a monitoring role was envisioned. See U S WEST Comments at 37.

What the Lockheed Martin document does is provide the "picture" of the basic PC change/freeze transactions that might be done, offering up additional incremental "add ons" that might make the Administrator's cost more palatable (such as providing equal access carrier information by office). However, having seen the picture -- the "skinny" as well as the "embellished" version -- does not *a priori* suggest that it should be adopted or that public policy goals are aligned with the technical proposal. They clearly are not.

Administrator takes on the mantle of a pseudo governmental agency. It is highly questionable that the Commission has authority to mandate the establishment of such an entity.

Certainly, Section 258 does not call for the establishment of such an Administrator. And, as Frontier persuasively argued in its Petition for Reconsideration,[53] the Commission is not as free as it might assume to interpret statutes and erect regulatory edifices based on its own policy considerations. Rather, it must be guided by Congressional direction. That direction, as reflected in the language of Section 258, reflects no Congressional intention that the telecommunications industry be regulated in the area of routine carrier changes through the machinations of an IXC-controlled PC Change/Freeze Administrator.

The issue is not whether or not such a proposal is feasible.[54] The question is whether the Commission has jurisdiction to mandate such an Administrator and whether it would be sound policy to do so, even if such jurisdiction was extant. On both counts, the PC Change/Freeze Administrator as proposed by various commenting parties fails.

The type of "ideal" PC Change/Freeze Administrator proposed by AT&T and MCI is fundamentally based on the LNP database administrator infrastructure (not surprising, given the "feasibility" study by the current LNP database administrator,

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[53] Frontier Petition for Reconsideration, CC Docket No. 94-129, filed Mar. 17, 1999 (errata filed Mar. 18, 1999) at 3-9.

[54] Compare MCI at 8 (arguing that "the most significant contribution of the Lockheed Martin paper is that it clearly establishes the technical feasibility of a third party PIC process").

Lockheed Martin). This model ignores not only the substantive differences, legally and factually, between LNP administration and the processing of carrier changes but it fails to adequately address the fact that most of the reasons previously argued for the creation of such entity have disappeared, as persuasively demonstrated in U S WEST's Comments.[55]

While ostensibly pressing the idea of a PC Change/Freeze Administrator as a market "correction" to what otherwise might prove fertile ground for anticompetitive conduct, the IXCs fail to make their case. As Ameritech pointed out, the Commission could not even find a potentially serious likelihood that LECs would behave anticompetitively with respect to the processing of IXC PC change orders, given the general separation between the retail and wholesale operations of these carriers.[56] Other than allegations, no commenting party has proven to the contrary in this further proceeding. And, given the Commission's promulgation of a direct rule on the processing of carrier changes (47 C.F.R. § 64.1100(a)(2)), even the prospect of improper LEC conduct is further attenuated.

Indeed, it seems as if the PC Change/Freeze Administrator is being advanced primarily to affect the cost structure of the industry in a manner favorable to the

[55] U S WEST Comments at 33-38.

[56] Ameritech at 2 citing the Second Report and Order ¶ 183. MCI's argument itself demonstrates the totally speculative nature of the concerns expressed, when it characterizes the current situation as a "recipe" for problems. MCI at 4. Nothing has been baked from this recipe that warrants governmental regulation, especially not to the level being proposed.

IXCs and unfavorable to the LECs.[57] The proposal would increase LEC costs, by requiring duplication of systems and message processing, and -- at least if the IXCs are to be believed -- would decrease IXC costs. A close reading of the Lockheed proposal, especially in conjunction with the cover filings of MCI and AT&T, makes clear that a driving motivator for these carriers is to avoid the hassle associated with making connections between their operations and new competitive LECs.[58]

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[57] Because LECs will always require the basic information associated with carrier changes in order to do the proper translations work in their switches, changing the way in which the information is secured and processed by them suggests duplicative costs and the potential stranding of current investment. At this time, carrier changes are sometimes sent directly from IXCs to LECs, with the submission feeding systems designed to allow for both record and switch changes. Other times, carrier change information is received directly from the end-user customer and passed off to the appropriate systems. Revenue is generated from the processing of these changes.

Under the PC Change/Freeze Administrator proposal, LECs would still receive the carrier information, but from the Administrator rather than the IXCs. Revenue might be generated for the switch translations work but not the record changes. **And**, the LECs would have to pay money to fund and maintain the Administrator. Such a proposal is crazy-making for LECs because they simultaneously lose money and incur new costs.

[58] See, e.g., MCI at 6 (predicting increased difficulty for IXCs in being able to identify a customer's LEC as competition increases and bemoaning the fact that "speed and reliability are often sacrificed when competitive local exchange carriers enter the market, since they do not initiate service with the same level of back office systems capability that characterize [incumbent] LEC systems"); AT&T at 13-14 ("IXCs will have to develop links and enter agreements with each [Local Service Provider] LSP, no matter how small its customer base, in order to provide carrier selection and freeze protection services to all customers" and that "the fragmentation of the hub-and-spoke system will cause carriers to incur additional expenses just to establish the necessary connections to a burgeoning number of LSPs").

This issue is not one requiring the intercession of a TPA. The matter is currently being worked in various fora in the industry, with differences in approaches/ opinions being aired in a process far more likely to lead to a good result than a paper pleading process before this Commission. See note 41, supra

This is a hoot! After promoting from the rooftops for all to hear the benefits of competitive alternatives in the provision of local exchange services, these carriers are disturbed that they will have to expend funds to interact with each of these privately-owned carriers or have to work through standards processes that might not produce a universal result.[59] Indeed, MCI claims that its PC Change/Freeze Administrator proposal will "ensure that the long distance market remains vibrantly competitive,"[60] with little regard to the economics of the local market or the increased costs being proposed to be incurred there. To these carriers we can only say, "Welcome to the competitive marketplace model! Messy but worth it (supposedly)."

Essentially, it cannot be good policy to pursue a course where LECs have their current operations closed down and replaced by an administrative infrastructure they are forced to underwrite[61] -- at least not without their voluntary agreement to participate in such a structure. While a PC Change/Freeze Administrator might be appealing to IXCs because it would recreate for them the hub-and-spoke design of their past loathed monopoly environment,[62] and may in

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[59] MCI at 12-13; AT&T at 14 (both noting that the current CARE format, although standardized, is voluntary). See also GVNW at 18-19.

[60] MCI at 6.

[61] SBC at 17 ("the Third Party Administrator system suggested in the Order is a complete transformation of the industry processes for handling carrier changes, verification . . ."). And see MCI's and AT&T's candid admission that the Third Party Administrator for PC Changes/Freezes would essentially displace LECs current ICSC operations. MCI at 8-9; AT&T at 18.

[62] AT&T argues that this design made sense since the LECs had the most customers in the past. AT&T at 3, 13.

fact allow them some reduction in operating costs,[63] the overall industry costs command the conclusion that the proposal should be rejected.

B. The "Carrier Information" At Issue Is Commonly Utilized

Furthermore, it is not entirely correct to argue -- as does MCI -- that a continuation along the current road will result in incumbent LECs controlling "the information and means by which another set of vertically integrated carriers . . . can offer services."[64] As both the Rural Carriers and National Telephone Cooperative Association ("NTCA") point out in their Petitions for Reconsideration,[65] the Commission's analysis in this area is not entirely satisfactory. The awareness of carrier identifications is necessary as between IXCs and LECs in order for LECs to satisfactorily provide services that affect the end-user subscriber.

The identification of the carrier chosen by the principal, i.e., the end-user customer, is clearly information necessarily shared between that customer and the LEC in order to accomplish the accurate routing of the call. IXCs submit changes in status to the customer's account as the agent for the end-user customer, not as an independent operator free to act on its own.

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[63] Throughout its comments, AT&T asserts that the current model of PC change processing is inefficient and excessively costly. See id. at 1-2, 4. And both AT&T and MCI assert that the costs of PC changes are excessive. Id. at 4, 14; MCI at 6-7. These carriers should file complaints (as MCI has done -- see MCI v. U S WEST, File No. E-97-08, filed Dec. 19, 1996) and prove their cases rather than propose that the whole industry engage in administrative upheaval based on their unsupported assertions about LECs' excessive charges.

[64] MCI at 4.

[65] Small Rural Local Exchange Carriers, Petition for Reconsideration, CC Docket No. 94-129, filed Mar. 18, 1999 at 10-11; NTCA Petition for Reconsideration, CC Docket No. 94-129, filed Mar. 18, 1999 at 13-15.

Thus, the current situation -- one of some long-standing -- is not one inappropriately requiring the sharing of information. The information is what allows the LEC to fashion its network to allow its customer access to the long-distance provider of the customer's choice through the facilities of the LEC. For these reasons, arguments grounded in concepts that LECs inappropriately have access to end-user carrier decisions are ludicrous.

To the extent that private entities want to join forces and create an entity that will assume some of the internal administrative functions they now perform, certainly -- barring any antitrust issues associated with concerted action -- they should be free to proceed. Such is a far cry, however, from the Commission mandating the creation of a PC Change/Freeze Administrator based "on free-floating notions of the 'purposes' of the Act that are cast adrift from the language that Congress used."[66]

Additionally, the attempt to compare or correlate the current LNP infrastructure with that proposed by the major carriers smacks of logical fallacy, rather than the "next logical step."[67] While AT&T is correct that the Commission

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[66] Andes v. Ford Motor Co., 70 F.3d 1332, 1335 (D.C. Cir., 1996), quoted by Frontier in its PFR at 5. By this citation, U S WEST should not be read to imply that Frontier raised this argument with respect to the notion of a PC Change/Freeze Administrator. It did not. On that issue, Frontier supports an FCC-mandated expansion of whatever functions are performed by the Liability Administrator into the PC freeze/change area (stating that the "Commission should expand th[e] role" of the Administrator), and urges the Commission to seek a proposal on this expanded Administrator role from industry. Frontier at 11-12. And see Qwest at 26-27. Of course, the Commission was already doing that in the FNPRM and various carriers responded to the invitation with the Lockheed Martin proposal.

[67] MCI at 3.

ultimately mandated the currently-deployed architecture,[68] it did so only after the industry -- composed of IXCs, incumbent LECs and competitive LECs (and in some cases in conjunction with state authorities) -- had voluntary decided upon a design that made commercial and economic sense.[69] For all practical purposes, then, the Commission's "mandate" was actually an "endorsement."

Furthermore, the Commission's authority in the area of numbering and numbering administration (which would include number portability) is both clear and expansive under current legislative grants of authority,[70] unlike the authority found in Section 258. In the LNP case, the Commission exercised its authority to bring a sense of structure over a matter affecting a national resource that needed to operate nationally in an interconnected, seamless way. In this case, however, while a "hub-and-spoke" design perhaps is desired by some IXCs, it is in no way required for either the Communications Act policies to be realized or the marketplace to

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[68] AT&T at 41-42. While the Commission ultimately deemed such architecture in the public interest, it also clearly observed that such administrative structure had already been devised by the affected parties before any regulatory action was taken to "bless the plan" after the fact. See In the Matter of Telephone Number Portability, CC Docket No. 95-116, Notice of Proposed Rulemaking, 10 FCC Rcd. 12350, 12356-57 ¶¶ 14-17, 12361 ¶ 28, 12363-68 ¶¶ 35-54 (1995), First Report and Order, 11 FCC Rcd. 8352, 8355-56 ¶ 5, 8362-66 ¶¶ 21-25, 8366-68 ¶¶ 27-31, 8399-8405 ¶¶ 91-102 (1996).

[69] Indeed, in order to replicate the process associated with choosing an LNP Administrator prior to the time the Commission lent to the process its *imprimatur*, a number of milestones would be required. First, an industry group would have to agree on the essentials associated with the Administrator; then a Request for Proposal would have to be crafted; then (assuming no more than one Request is necessary) an Administrator would have to be chosen and it would have to craft guidelines for conduct, which undoubtedly would be commented on by the affected parties. Suffice to say this is not a "quick" or non-contentious process.

[70] 47 U.S.C. § 251(e).

function efficiently. Therefore, any activity in this area would simply insinuate the Commission into matters of commerce, contract and standards-setting -- a situation quite unlike the regional database deployments associated with LNP.

Furthermore, it has been demonstrated that carriers will never recover all their costs of establishing the LNP database model. Similarly-mandated regulatory cost burden should not be foisted upon LECs against their will, especially where the regulatory authority to act is so questionable and the public benefit not demonstrable. For all of the above reasons, the FCC should reject any PC Change/Freeze Administrator.[71]

IV. INTERNET MATTERS

A. Internet Verifications Generally

U S WEST supports the vast majority of commentors who argue that the Commission's proposed approach to carrier changes on the Internet (with implications about how the Commission might view other commercial transactions engaged in over that medium) is unduly conservative.[72] We particularly support those that make a compelling case that the "electronic signatures" currently being utilized by carriers with respect to carrier changes probably do constitute legally viable signatures, sufficient in all respects to support an electronic Letter of Agency

[71] Even if a Third Party Administrator for Liability (Dispute Resolution) is agreed to by industry participants, the Commission should not exercise authority to "add onto" those responsibilities those associated with PC freezes/changes. See various commentors suggesting that this would be a natural progression. Excel Telecommunications, Inc. ("Excel") at 8-9; Frontier at 11-12.

[72] See CompTel/ACTA at 2-3; Tel-Save generally.

("LOA"),[73] despite the Commission's tentative conclusion to the contrary.

A more liberal approach to contractual relationships over the Internet, and to e-commerce in general, is in the public interest. Indeed, as commentors persuasively demonstrate, such an approach is compelled by executive and legislative policy,[74] as well as the Commission's own internal procedural "jurisprudence."[75] As U S WEST mentioned in our opening comments -- and as others pointed out as well -- the Commission's own filing rules permit the use of electronic signatures to attest and/or verify the accuracy of submitted materials.[76] Consumers should be accorded no less convenience.[77]

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[73] See CompTel/ACTA at 6-9; Tel-Save at 8-13. Compare MoPSC at 2, whose comments in this area are confusing. On the one hand, MoPSC claims that a signature of the type described by the FCC in the FNPRM would not provide adequate verification. However, it then states that the downloading of a signature page used only to meet LOA requirements would comply with the local rules.

Those arguing to the contrary (generally TPV providers, such as TelTrust and PriceInteractive, Inc.) cite no law to support their position that the information included on service orders when presented in such a manner so as to reflect an "intent to sign" are not valid "signatures" in an electronic environment.

[74] See CompTel/ACTA at 4-5 (discussing executive branch e-commerce policies), 7 (discussing legislative initiatives in this area, both federal and state); Tel-Save at 3 and nn. 4-5, 7-8 n. 7 (executive branch positions), 10-12 and n. 13 (addressing the reformation of the Uniform Commercial Code ("UCC") language in this area, as well as adoption of state statutes); Qwest at 16-17 and nn. 23-24 (citing to liberal legislative enactments in this area).

[75] Compare Texas Public Utility Commission ("PUCT") at 11-12 (pointing out that courts accept electronically signed filings and faxed signatures).

[76] See U S WEST Comments at 23-24; CompTel/ACTA at 8;Tel-Save at 12 and n.15.

[77] U S WEST agrees with CompTel/ACTA that the Commission should not mandate the collection or use of any additional verifying information, particularly utilization of social security information. CompTel/ACTA at 9. Decisions around such collections should be made by carriers, taking into consideration factors associated with consumer privacy, security, and regulatory concerns.

For the above reasons, we disagree with those -- such as Teltrust, PriceInteractive and the NASUCA -- that would freeze the Commission's verification options at their current "off-line" level[78] or that eschew the reliability and integrity of processing such orders based on confirming information.[79] Rather, we support the comments of commentors such as CompTel/ACTA who argue that there should be "Internet-based methods of confirming customer choices"[80] within the range of verification options available to customers with respect to their exercise of choices of serving carriers. Such choices could include the use of personally-identifiable information whose broad distribution was limited[81] or the provision of credit card information,[82] or -- in technologically-capable situations --

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[78] Teltrust at 14 (verifications could occur "either by having the consumer call the TPV entity's toll-free telephone number or by having the TPV entity contact the consumer;" with follow-up calls or e-mails to be utilized, if necessary); PriceInteractive at 16-17; NASUCA at 3, 12.

[79] See PriceInteractive at 16.

[80] CompTel/ACTA at 9-10. And see Sprint at 9-10 (suggesting possible modifications of the FCC's current three verification methods, including pressing a "call me" button or verifying the transaction through interaction with a TPV website).

[81] A number of commentors address the provision of such information from consumers to commercial operators on the Internet. See Ameritech at 16; RCN Telecom Services ("RCN") at 3; CoreComm Ltd. ("CoreComm") at 4; Excel at 3-4.

[82] See, e.g., MoPSC at 3. Credit card information is mentioned as possible verifying information by a number of commentors. See Ameritech at 16; CoreComm at 4-5; Excel at 4; Frontier at 7-8 (arguing that credit card information when accompanied by authorization to bill to the card should be sufficient verification). But see Qwest at 19-20 (arguing that providing the information, if it cannot be verified internally by the carrier, is useless as an "identification verification" mechanism and that requiring verification of the proffered information would add unwarranted costs to the commercial transaction).

Excel "urges the Commission to define certain categories of subscriber information which can serve to verify a subscriber's intent and authorization to

the recording of the customer's voice.[83]

B. Internet Establishment/Lifting Of PC Freezes

A number of commentors argue that the Internet provides an appropriate forum not just with respect to engaging in commerce in general, including the placement of telecommunications orders, but also to establish or lift a PC freeze.[84] The Commission should not fall into the trap of inadvertently "ruling" on this issue through general observations or remarks when it issues its final order in this proceeding.

U S WEST has spent the better part of six months in litigation with Tel-Save over the question of whether or not PC freezes would be able to be **lifted** utilizing electronic mail. While a business decision has been made to go forward with such a business practice on a trial basis,[85] the Commission should not mandate any customer "rights" with respect to how they engage commercially with any carrier or, conversely, any carrier obligations with respect to Internet transactions, whether those be in the area of establishing service, changing carriers or executing PC

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change carriers." Excel at 3. U S WEST urges the Commission to do nothing of the kind. This should be left to the discretion of the serving carrier with, at most, a suggestion of the **types** of information that might be considered appropriate. Compare 47 C.F.R. § 64.1150(c).

[83] See PriceInteractive at 17.

[84] See Tel-Save at 17; RCN at 2-4; CoreComm at 5; Excel at 3-5; Qwest at 20-21.

[85] U S WEST Comments at 26-28. And see Letter from John Munn, Attorney, U S WEST to March Greene, Swidler Berlin Shereff Friedman, LLP (attorney for Tel-Save) outlining the trial.

freezes. For some companies, this is still an area of experimentation and testing.[86]

There is strong national executive policy in the area of Internet transactions to refrain from regulation and allow the market to drive the landscape, choices and commercial opportunities. The Commission should endorse that policy and refrain from any action in this area.

V. TPV MATTERS

A variety of parties address matters raised by the Commission around the TPV process. Such commentors range from TPV providers to carriers to regulatory commissions. U S WEST does not here address all the comments, but chooses certain ones as "typical" of those positions represented.

Overall, our position is that TPV should be permitted to be as flexible and as modifiable as possible, to accommodate not only the current commercial environment but the landscape of the future.[87] Consistent with that position, we generally oppose any regulatory action that would depress choice and flexibility with respect to TPV design and deployment.[88]

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[86] For example, BellSouth's observation that it is not comfortable with simple e-mail technology and believes it a better practice to interact through the website which is supported by encryption technology is certainly not an irrational one. BellSouth at 3-4. Nor is SBC's position that it currently lacks the level of security akin to FCC-approved forms of verification and would be uncomfortable allowing the use of the technology for verification purposes at this time subject to second-guessing. SBC at 14.

[87] With respect to this observation, it should be noted that the PUCT's proposal for extensive audio recording, ranging from the initial sales promotion through the customer's response to the formal verification (PUCT at 8-10) is commercially unwieldy and would cast a stigma on telecommunications sales that is absent with respect to other commercial transactions.

[88] See, e.g., GST at 20.

A. Automated TPV Processes Should Be Permitted

Most commenting parties -- a glaring exception being one of the TPVs (Teltrust) -- argue that automated TPV processes should be permitted, since such is cost-effective and fills a verification option believed necessary in the marketplace.[89] While some carriers might prefer the "human touch" associated with live operators, it is clear that other carriers (both large and small) prefer the use (and price) of an automated system.

The Commission should do nothing to interfere with this option. While the Commission might ultimately determine that the example it provides of a carrier representative reading a TPV script does not comply with the fundamental "independent" concept of its TPV rules,[90] beyond that it should provide as many

[89] See, e.g., Ameritech at 12-13; CompTel/ACTA at 9; Frontier at 6-7; MediaOne at 4-7; MoPSC at 2; NYSDPS at 5-6 (if access to live operator is possible); SBC at 12; Sprint at 8; Qwest at 13-14. But see Teltrust at 7-9.

[90] U S WEST can understand how, in the abstract, having a carrier sales person read a script may seem inconsistent with TPV and the "independence" requirement. See Teltrust at 3-5; PriceInteractive at 13-14 (both TPV providers objecting to the practice). And see CompTel/ACTA at 9; SBC at 12 (both objecting to this methodology). However, U S WEST is not comfortable in concluding that in fact this method compromises the independence of the TPV process. After all, the script is drafted by the TPV operator, the recording facilities are theirs, there are undoubtedly random quality checks, etc. U S WEST agrees with Ameritech and MediaOne that this "verification model" is not necessarily suspect simply because the carrier employee rather than the TPV provider asks the questions. See Ameritech at 12-13; MediaOne at 7, n.13. The notion that some type of "undue influence" might be exerted over the customer (through either tone or relationship) (see Teltrust at 3-5) is pure speculation, at least to the best of U S WEST's knowledge. (For example, Teltrust "concurs with the Commission's doubts about the truthfulness of the verification" but points to no evidence to support those "doubts". Id.).

TPV options as possible,[91] ruling on challenged options through the complaint or other similar processes.

1. Carrier Representatives Should be able to "Activate" TPV Through Three-Way Calls and Should, if They Desire, Stay On the Line

Most carriers that commented on this item,[92] and some TPV providers,[93] agree that a carrier representative should be able to do a "hot transfer" type of call from the carrier (or the carrier's telemarketer) to the TPV provider. This not only adds to customer convenience but decreases costs.[94] Furthermore, as noted by one commentor, the carrier's line into the TPV provider might well serve as the "technological link" establishing the telecommunications connection.[95]

[91] U S WEST read the Commission's inquiry in this area to be confined to the question of whether or not the previously-addressed "carrier/scripted TPV" was consistent with the Commission's rules. Further Notice ¶ 167. While the Commission did mention that there was automated and live TPV methodologies, we did not read the Further Notice as asking about the propriety of these methodologies or suggesting that the automated methodology might not apply. However, commentors addressed the issue(s) as though the latter was open for comment. So, we respond herein to those commentors.

[92] See, e.g., Ameritech at 10-11; CoreComm at 5-6; Excel at 6-7; Frontier at 6; MediaOne at 6-7; RCN at 5; SBC at 10; Sprint at 7; Qwest at 12-13.

[93] Teltrust at 5-6; PriceInteractive at 12 (both disagreeing with National Association of Attorneys General ("NAAG") position that a carrier's sales representative or agent should not be permitted to use a three-way call to connect the subscriber with the TPV entity).

[94] Customers want the "transaction" to be over, not for there to be untied ends that will delay the execution of their contractual decisions. And, carriers want the costs of TPV kept as low as possible. TPV transactions that require "call backs" are more expensive than those that do not (because it often takes more than one call to reach the party with whom the carrier/telemarketer spoke). See CoreComm at 5-6; Excel at 6-7; MediaOne at 6; Qwest at 13. This is one reason why off-line TPV is more expensive regarding Internet transactions than telephonic ones.

[95] Qwest at 13.

The more fundamental area of disagreement has to do with whether the carrier/telemarketer should be able to remain on the line as the TPV transaction unfolds and is executed, possibly speaking or in some other fashion insinuating his/herself into the verification communication. Teltrust and others say "no."[96] A number of other commentors disagree.[97]

The Commission should not regulate in this area. It should leave this issue to one of contract between the TPV and the carriers. Some carriers might want their representatives to stay on the line (seeing such "customer care connections" as creating a marketing differentiator); others might want to keep their TPV costs as minimal as possible and will want their representative to hand-off the call and get off the line as soon as possible.

Barring specific evidence of broad-based industry malfeasance in this area, a general rule should not be enacted. Idiosyncratic objections to carrier practices should be handled either through informal processes or, if sufficiently serious, through the formal complaint process.

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[96] Teltrust at 3-5; BellSouth at 2; NYSDPS at 6.

[97] See, e.g., MediaOne at 6-7; MoPSC at 2 (carrier's involvement should be limited to "monitoring the call"); PriceInteractive at 12-13 (where the discussion makes clear that the commentor believes that the carrier's representative should be able to stay on the call, if interested in doing so); RCN at 5 (carrier rep should be able to stay on call to answer questions); Excel at 6-7 (carrier rep should be able to stay on line to answer questions); Ameritech at 11-12 (carrier rep should be able to answer questions and perform customer-care functions); SBC at 11 (carrier rep should be able to stay on line but not be an active participant; if latter occurs, then call should be discontinued); Sprint at 7-8 (carrier rep should be able to stay on the line to answer questions); Qwest at 12 (if carrier rep speaks, verification call should end).

2. The Commission Should Not Prescribe Minimum Content Rules

A number of commentors urge the Commission to establish minimum content rules in the area of TPV or to prohibit the discussion of some content.[98] Even some TPVs argue that certain rules should be promulgated, although the advocacy at times appears inconsistent[99] and incomplete.[100]

U S WEST opposes any content rules in this area. Current circumstances suggest no material issues associated with TPV content, suggesting the lack of any need for regulatory interference. Any particular concerns in this area should be brought before the Commission with respect to a specific fact situation and resolved within the context of those facts.

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[98] MediaOne at 9 (TPV providers should not be permitted to discuss PC freezes); CompTel at 10 (certain minimum matters should be covered); Voice Log at II) B) 2) (proposing a requirement that content of verifications be "clear and conspicuous" and in language of the solicitation giving rise to the verification); SBC at 13 (TPV providers should be limited to set script); Ameritech at 14 (does not oppose additional scripting if that scripting will "help to ensure that the TPV process is informative, accurate and consumer-friendly"); Qwest at 14-16 (generally the FCC should not act in an affirmatively prescriptive manner but should prohibit the conveyance of marketing information).

[99] Teltrust, for example, argues that the Commission "should prohibit marketing on the part" of TPVs, but also urges that such providers should be permitted to provide additional information to customers, such as "information about the carrier itself and information on a range of services and prices offered by that carrier." Teltrust at 9-11. Others would oppose this kind of "additional information" as inherently marketing in nature or as detracting from the independence of the TPV. See Frontier at 7; Sprint at 9. And compare Voice Log at n. 10 (observing that it has "yet to find a live verification operator who would answer questions about the rates, services, sales incentives or other aspects of the transaction" being verified).

[100] CompTel/ACTA's advocacy, for example, fails to list service differentiations as one of the mandated "basic content" items (CompTel/ACTA at 10), which -- of course -- is as it should be, pursuant to Rule 64.1100(a)(1). And see Sprint at 8 (including such item as necessary for any TPV scripted communication, though not advocating a standardized script).

VI. DEFINITION OF SUBSCRIBER

As predicted,[101] a number of commentors filed positions on what approach the Commission should take to the term "subscriber." As noted by carriers, any FCC-prescribed definition must be confined to the slamming context[102] and should be liberal enough to accommodate the practical fact that adults in a single household often think they are all authorized to make decisions about telecommunications purchases.[103]

Those who object to any expansion of the definition in a slamming context do

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[101] See U S WEST Comments at 25 n.49 (anticipating comment on this matter and urging caution with respect to how a definition of "subscriber" different from that historically utilized by a LEC is crafted and implemented).

[102] See CompTel/ACTA at 17, proposing that any definition begin with the phrase "For the purpose of Part 64, Subpart K of the Rules, the term 'subscriber' shall include . . ." And see CBT at 3 (proposing a number of definitions and suggesting that the definition finally agreed upon with respect to the industry cramming guidelines might be suitable in a slamming context, as well).

U S WEST opposes the NASUCA proposal that the definition of "subscriber" change depending on whether a carrier is billing for itself or through a LEC. NASUCA at 3, 13. This simply adds an unnecessary level of complexity to the process.

[103] See, e.g., SBC at 14-15.

What the Commission does in this area seems entirely immaterial to the matter of "slamming" from a practical perspective. While "family disagreements" might no longer fit the strict liability definition of slamming the Commission has chosen to employ (Second Report and Order ¶ 80) if the Commission changes the definition, no rational carrier is going to argue with a customer who says that an unauthorized change of carrier was made in this context. That is, the customer of record will be put back to the carrier desired by that customer. And, for ease of administration (at least in the short run), U S WEST suspects that the customer will be accorded the 30 days free service and other ameliorative aspects of the Commission's rules.

About the only thing that might be affected by a broader definition of subscriber is that family quarrels might not need to be reflected in slamming reports (if such reports are required) and such might be exempted from a "double payment" regime.

so because of the "unnecessary burden" on carriers associated with expanding the scope of parties permitted to act with respect to an account when those parties are not identified as legally-enabled actors with respect to the account.[104] However, to the extent the Commission sufficiently constrains any chosen definition to the slamming context itself, this alleviates the problem. If the Commission acts in this area, it should make specific reference to that part of its rules in any rule language[105] and should include in its definition references to individuals "authorized by federal or state law" to contract regarding telecommunications purchases.[106]

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[104] Compare MoPSC at 3; NYSDPS at 8-9; GST at 24 and n. 30; GVNW at 25.

[105] See note 105, supra.

[106] See CompTel/ACTA at 17 ("or any person or entity who is authorized, as a matter of contract or law, to select a preferred carrier on behalf of the subscriber," citing to the use of similar language in a different context). See also reference in Further Notice to SBC proposed language, which is similar to the CompTel/ACTA proposal. Further Notice ¶ 176; Qwest at 22-23; Ameritech at 17 (endorsing the SBC language). In its most current filing, SBC proposes a shorter, simpler definition. SBC at 15. See also Sprint at 10-11 (any adult member of the household who states that he/she is authorized should be deemed a "subscriber").

And see U S WEST Comments at 25 n.49. U S WEST supports the above language over that which would use the word "adults" or "over 18" in the definition. Compare MCI at 24. And compare MediaOne at 13, Qwest at 22-23 (addressing a Florida subscriber "authorization" definition which, in U S WEST's opinion, is somewhat different than defining the term "subscriber." However, the concepts intersect. Florida's rule would deem all adults (over 18) in the household as authorized to order purchases on the account).

Ultimately, regardless of what action is taken, Qwest is correct that "there is no way for a carrier to confirm that the person with whom the carrier is dealing is truly among those authorized to make the switch." Qwest at 22. And see PUCT at 14-16. That has been true forever and will remain true. However, historically it has been a manageable situation. Barring any punitive regulatory consequences associated with the dilemma (see note 103 supra), it should remain manageable.

VII. CONCLUSION

The public interest would be well served were the Commission to adopt rules consistent with those proposed in U S WEST's opening comments and reiterated herein. Of the Commission's three proposals directed to more accurate carrier identifications, assuming full cost recovery, requiring all reselling carriers to obtain a CIC would be the most cost effective and easily managed. The Commission's second option, that of utilizing some type of pseudo-CICs could also be a viable alternative. However, given the obvious confusion around this option, additional dialogue would be necessary to craft a specific cost-effective design.

A PC Change/Freeze Administrator for Preferred Carrier Changes/Freezes should be soundly rejected. Parties advocating such Administrator, while arguably demonstrating "feasibility," do nothing to demonstrate the overall market or public policy benefits associated with such a proposal. Furthermore, even a cursory review of the IXC comments in this area -- as well as the Lockheed Martin proposal -- demonstrates that the proposal could well result in a net increase in industry costs, given the cost burden shifted to the LECs under the proposal. While such might be an "ideal" result for IXCs soon to be competing with those LECs, it is a bad market and policy result. The inability of IXCs to prove in the benefit of the PC Change/Freeze Administrator now being somewhat longstanding as regulatory inquiries go, the concept should be removed from further consideration.

Verification options via the Internet or e-commerce should be accorded a wide latitude. Additional verification options, such as the provision personally-identifiable information within the commercial transaction, should be permitted.

Moreover, the Commission should take no regulatory action that would depress choice and flexibility of the TPV design and deployment, including regulations regarding who can be parties to the transaction and the content communicated. Additionally, electronic TPV options should be allowed, assuming they accomplish the kind of personal control and security aspects of other verification options.

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May 3, 1999

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a courtesy copy of the **REPLY COMMENTS** to be served, via hand delivery, upon persons listed on the attached service list (those marked with an asterisk), and 3) a copy of the **REPLY COMMENTS** to be served, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list.

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